



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 220427-0107]**

**RIN 0648-BL22**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Catch Limits for Red Grouper**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this proposed rule would increase commercial and recreational catch levels for red grouper in the Gulf of Mexico (Gulf). The purposes of this proposed rule are to prevent overfishing of red grouper and to achieve optimum yield (OY).

**DATES:** Written comments must be received by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments on the proposed rule identified by "NOAA-NMFS-2022-0029" by either of the following

methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov) and enter "NOAA-NMFS-2022-0029" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Dan Luers, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments - enter "N/A" in the required fields if you wish to remain anonymous.

Electronic copies of the framework action may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/modification-gulf-mexico-red-grouper-catch-limits>. The framework action includes an environmental assessment, a fishery impact statement, a

Regulatory Flexibility Act analysis, and a regulatory impact review.

**FOR FURTHER INFORMATION CONTACT:** Dan Luers, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *daniel.luers@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the Gulf reef fish fishery, which includes red grouper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

### **Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this proposed rule are in gutted weight.

Red grouper in the Gulf exclusive economic zone are found primarily in offshore areas of the eastern Gulf with hard bottom, that is, bottom structure with relief that attracts

fish. Red grouper is managed as a single stock with commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). Since 2009, the stock ACL has been allocated 76 percent to the commercial sector and 24 percent to the recreational sector as set in Amendment 30B to the FMP (74 FR 17603, April 16, 2009). However, on March 9, 2022, NMFS approved Amendment 53 to the FMP, which modifies the allocation to 59.3 percent for the commercial sector and 40.7 percent for the recreational sector. Amendment 53 also adjusts the red grouper catch level based on the results of a 2019 stock assessment (Southeast Data, Assessment, and Review (SEDAR) 61). NMFS published the proposed rule for Amendment 53 on January 19, 2022 (87 FR 2737), in the **Federal Register** and is developing the final rule.

Commercial red grouper fishing is managed under the Grouper-Tilefish Individual Fishing Quota (IFQ) program, which began January 1, 2010, through Amendment 29 to the FMP (74 FR 44732, August 31, 2009, and 75 FR 9116, March 1, 2010). Under the IFQ program, the commercial red grouper quota is equal to the commercial ACT. The annual allocation of red grouper is distributed on January 1 of each year to those who hold red grouper shares.

Recreational red grouper harvest is managed with catch limits, in-season and post-season accountability measures (AMs), season and area closures, a minimum size limit, and

recreational bag and possession limits. The in-season AM for red grouper requires NMFS to close the recreational sector for the remainder of the fishing year when red grouper landings reach or are projected to reach the recreational ACL. If recreational landings of red grouper exceed the recreational ACL in a fishing year, the post-season AM requires NMFS to shorten the length of the following recreational fishing season by the amount necessary to ensure landings do not exceed the recreational ACT. If the red grouper stock is overfished, NMFS must also reduce the ACL and ACT by the amount of the recreational ACL overage in the prior year.

Subsequent to the management measures the Council recommended in Amendment 53, the Council and its advisory groups recommended further revisions to red grouper catch levels based on an interim analysis conducted by the NMFS Southeast Fishery Science Center (SEFSC).

In May 2021, the Council's Scientific and Statistical Committee (SSC) reviewed the results of the interim analysis, which indicated Gulf red grouper harvest levels could be increased. However, this result was considered preliminary because the catch level projections were dependent on the sector allocations being evaluated in Amendment 53. The Council requested an updated interim analysis based on the preferred allocation in Amendment 53 at its June 2021 meeting, which the SEFSC prepared. This interim analysis also applied a

new methodology for adjusting recreational harvest weight estimates and used the NMFS Bottom Longline Survey as the index of abundance.

The SSC reviewed the new interim analysis at its August 2021 meeting and agreed with the changes made by the SEFSC. Based on the results of the interim analysis, the SSC recommended an OFL of 5.99 million lb (2.72 million kg) and an ABC of 4.96 million lb (2.25 million kg). The revised ABC is based on a 3-year moving average relative to the OFL. The SSC chose to use the 3-year moving average as opposed to a 5-year moving average because it was slightly more conservative and thought to be more representative of recent population trends, and because of uncertainty regarding the impacts of the 2021 red tide event on the West Florida Shelf. Based on the SSC recommendations, the Council chose to update the catch limits and approved this framework action at its October 2021 meeting. The proposed OFL and ABC are greater than those specified in Amendment 53, which are an OFL of 4.66 million lb (2.11 million kg) and an ABC of 4.26 million lb (1.93 million kg).

#### **Management Measures Contained in This Proposed Rule**

This proposed rule would increase catch levels for Gulf red grouper relative to those established in Amendment 53. The catch levels in this proposed rule would be set consistent with the sector allocations established in Amendment 53.

Therefore, the catch levels in this proposed rule would not be implemented until the final rule to implement Amendment 53 is published in the **Federal Register** and is effective.

If implemented, this proposed rule would revise the ACLs and ACTs for the Gulf red grouper stock. This proposed rule would increase the total ACL for Gulf red grouper from 4.26 million lb (1.93 million kg) to 4.96 million lb (2.25 million kg).

Using the sector allocations approved in Amendment 53, this proposed rule would increase the commercial ACL and ACT from 2.53 million lb (1.15 million kg) and 2.40 million lb (1.09 million kg) to 2.94 million lb (1.33 million kg) and 2.79 million lb (1.27 million kg), respectively.

For the recreational sector, this proposed rule would increase the recreational ACL and ACT from 1.73 million lb (0.78 million kg) and 1.57 million lb (0.71 million kg) to 2.02 million lb (0.92 million kg) and 1.84 million lb (0.83 million kg), respectively.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. The objectives of this proposed rule are to revise the ACLs and ACTs for Gulf red grouper consistent with the best scientific information available, and to continue to achieve OY consistent with the requirements of the Magnuson-Stevens Act.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. All monetary estimates in the following analysis are in 2019 dollars.

This proposed rule would increase catch limits and catch targets for Gulf red grouper relative to those established in Amendment 53, consistent with the sector allocations established in Amendment 53. This proposed rule cannot be implemented before a final rule to implement Amendment 53 is published in the **Federal Register** and is effective. Amendment 53 set the OFL, ABC, total ACL, commercial ACL, recreational ACL, commercial ACT (quota) and recreational ACT for Gulf red grouper at the following values: 4.66 million lb (2.11 million



kg), 4.26 million lb (1.93 million kg), 4.26 million lb (1.93 million kg), 2.53 million lb (1.15 million kg), 1.73 million lb (0.78 million kg), 2.40 million lb (1.09 million kg), and 1.57 million lb (0.71 million kg), respectively. This proposed rule, if implemented, would increase those values to 5.99 million lb (2.72 million kg), 4.96 million lb (2.25 million kg), 4.96 million lb (2.25 million kg), 2.94 million lb (1.33 million kg), 2.02 million lb (0.92 million kg), 2.79 million lb (1.27 million kg), and 1.84 million lb (0.83 million kg), respectively. Thus, this proposed rule is expected to directly regulate commercial fishing businesses that possess Gulf red grouper shares in the grouper-tilefish IFQ program and for-hire fishing businesses that target red grouper.

The commercial red grouper quota is allocated annually based on the percentage of red grouper shares in each IFQ account (e.g., if an account possesses 1 percent of the red grouper shares and the commercial quota is 1 million lb (0.45 million kg), then that account would receive 10,000 lb (4,536 kg) of commercial red grouper quota). Although it is common for a single IFQ account with red grouper shares to be held by a single business, some businesses have multiple IFQ accounts with red grouper shares. As of February 19, 2020, 495 IFQ accounts held red grouper shares. These accounts and red grouper shares were owned by 436 businesses. Thus, NMFS assumes this proposed rule would directly regulate 436

commercial fishing businesses.

A valid Federal charter vessel/headboat (for-hire) permit for Gulf reef fish is required to legally harvest red grouper in the Gulf from a for-hire vessel. NMFS does not possess complete ownership data regarding for-hire businesses that hold these permits, and thus potentially harvest red grouper. Therefore, it is not currently feasible to accurately determine affiliations between vessels and the businesses that own them. As a result, for purposes of this analysis, NMFS assumes each for-hire vessel is independently owned by a single business, which is expected to result in an overestimate of the actual number of for-hire fishing businesses directly regulated by this proposed rule.

NMFS also does not have data indicating how many for-hire vessels actually harvest Gulf red grouper in a given year. However, in 2019, there were 1,277 vessels with valid Federal charter vessel/headboat permits for Gulf reef fish. Of these 1,277 vessels, 90 vessels are used primarily for commercial fishing purposes and thus are not considered for-hire fishing businesses in this analysis. Further, Gulf red grouper is only targeted and almost entirely harvested in waters off the west coast of Florida. Of the 1,277 vessels with valid Federal charter vessel/headboat permits for Gulf reef fish, 799 were homeported in Florida. Of these permitted vessels, 60 are primarily used for commercial fishing rather than for-hire

fishing purposes and thus are not considered for-hire fishing businesses. In addition, 48 of these permitted vessels are considered headboats. Compared to charter vessels, headboats take a larger group of anglers to harvest a diverse range of species on a trip, and therefore do not typically target a particular species. Therefore, NMFS assumes that no headboats would be directly affected as a result of this proposed rule. However, charter vessels often target red grouper. Of the 799 vessels with valid Federal charter vessel/headboat permits for Gulf reef fish that are homeported in Florida, 691 vessels are charter vessels. A recent study reported that 76 percent of charter vessels with valid Federal charter vessel/headboat permits for Gulf reef fish were active in the Gulf during 2017 (*i.e.*, 24 percent were not fishing). A charter vessel would only be directly affected by this proposed rule if it is fishing. Given this information, our best estimate of the number of charter vessels that are likely to harvest Gulf red grouper in a given year is 525, and thus this proposed rule is estimated to directly affect 525 for-hire fishing businesses.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily involved in the commercial fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation

(including its affiliates), and its combined annual receipts (revenue) are not in excess of \$11 million for all of its affiliated operations worldwide.

NMFS does not collect revenue data specific to commercial fishing businesses that have IFQ accounts; rather, revenue data are collected for commercial fishing vessels in general. It is not possible to assign revenues earned by commercial fishing vessels back to specific IFQ accounts and the businesses that possess them because quota is often transferred across many IFQ accounts before it is used by a vessel for harvesting purposes, and specific units of quota cannot be tracked. However, from 2014 through 2018, the maximum annual gross revenue earned by a single vessel was about \$2.39 million, which occurred in 2015. The average gross revenue per vessel was about \$143,000 in that year. By 2018, the maximum and average gross revenue per vessel had decreased to about \$1.04 million and \$96,000, respectively. Based on this information, all commercial fishing businesses directly regulated by this proposed rule are determined to be small entities for the purpose of this analysis.

For other industries, the SBA has established size standards for all major industry sectors in the U.S., including for-hire businesses (NAICS code 487210). A business primarily involved in for-hire fishing is classified as a small business if it is independently owned and operated, is

not dominant in its field of operation (including its affiliates), and has annual receipts (revenue) not in excess of \$8 million for all its affiliated operations worldwide. The maximum annual gross revenue for a single headboat in the Gulf was about \$1.38 million in 2017. On average, annual gross revenue for headboats in the Gulf is about three times greater than annual gross revenue for charter vessels, reflecting the fact that businesses that own charter vessels are typically smaller than businesses that own headboats. Based on this information, all for-hire fishing businesses directly regulated by this proposed rule are determined to be small businesses for the purpose of this analysis.

If implemented, NMFS expects this proposed rule to directly regulate 436 of the 532 businesses with IFQ accounts, or approximately 82 percent of those commercial fishing businesses. Further, NMFS expects this proposed rule to directly regulate 525 of the 1,187 for-hire fishing businesses with valid Federal charter vessel/headboat permits in the Gulf reef fish fishery, or approximately 44 percent of those for-hire fishing businesses. NMFS has determined that, for the purpose of this analysis, all directly regulated commercial and for-hire fishing businesses are small entities. Based on this information, NMFS expects the proposed rule to affect a substantial number of small entities.

Because revenue and cost data are not collected for the

commercial fishing businesses that are expected to be directly regulated by this proposed rule, direct estimates of their economic profits are not available. However, economic theory suggests that annual allocation (quota) prices should reflect expected annual economic profits, which allows economic profits to be estimated indirectly. Further, the 436 commercial fishing businesses that own red grouper shares, and therefore receive red grouper quota at the beginning of each calendar year, also own shares and receive quota in the other IFQ share categories, *i.e.*, red snapper, gag, shallow-water grouper, deep-water grouper, and tilefish. These businesses earn economic profits because of their ownership of these shares as well their red grouper shares.

However, economic profits are only realized if the quota allocated to these businesses with shares is actually used for harvesting purposes (*i.e.*, no economic profits will accrue unless the quota results in the production and sale of seafood). Because the average annual commercial landings of red grouper from 2015-2019 exceeds the proposed red grouper commercial quota, NMFS assumes that all of the red grouper commercial quota will be harvested in the foreseeable future. Similarly, because practically all of the commercial red snapper quota has been used for harvesting in recent years, NMFS assumes that all of the commercial red snapper quota allocated to these businesses will be harvested in the

foreseeable future. However, based on 2015-2019 data, NMFS expects that only 84 percent of the deep-water grouper commercial quota, 50 percent of the gag commercial quota, 35 percent of the shallow-water grouper commercial quota, and 78 percent of the tilefish commercial quota allocated to these businesses will be used for harvesting in the foreseeable future. Given these quota utilization rates in combination with average annual allocation prices in 2019 and annual commercial quotas in 2020 by share category, total annual economic profits for commercial fishing businesses with red grouper shares are estimated to be at least \$18.61 million. This estimate does not account for any economic profits that may accrue to commercial fishing businesses that own red grouper shares from the harvest of non-IFQ species. Such profits are likely to be small because harvest of IFQ species accounts for around 85 percent of commercial IFQ vessels' average annual gross revenue, and economic profits from the harvest of non-IFQ species tend to be much smaller than those from IFQ species. Given that there are 436 commercial fishing businesses that own red grouper shares, the average annual expected economic profit per commercial fishing business is at least \$42,700.

However, most of these economic profits (82 percent) are the result of owning red snapper shares. Only approximately \$1.77 million (or 9.5 percent) of the 436 commercial fishing

businesses' economic profits are due to the ownership of red grouper shares. NMFS expects this proposed rule only to affect economic profits from the ownership of red grouper shares. Specifically, this rule proposes to increase the commercial red grouper ACT (quota) from 2.40 million lb (1.09 million kg) to 2.79 million lb (1.27 million kg). Given an annual allocation price of \$0.59 per lb (\$1.30 per kg) in 2019 for red grouper, the proposed increase in the commercial red grouper quota is expected to increase annual economic profits to these commercial fishing businesses by \$223,610 or about \$513 per business per year. Thus, annual economic profit is expected to increase by about 1.2 percent on average per commercial fishing business.

Based on the most recent information available, average annual profit is \$26,514 per charter vessel. The proposed rule would increase the recreational ACL for Gulf red grouper from 1.73 million lb (0.78 million kg) to 2.02 million lb (0.92 million kg). NMFS expects the recreational ACL increase to increase the recreational season length by 12 days by extending the season through the end of year. Without the ACL increase, NMFS projects that the season would end on December 19. NMFS expects the 12-day increase in season length to increase the number of trips targeting red grouper on charter vessels by 665 angler trips. Net Cash Flow per Angler Trip (CFpA) is the best available estimate of profit per angler



trip by charter vessels. CFpA on charter vessels is estimated to be \$141 per angler trip. Thus, the estimated increase in charter vessel profits from this proposed rule is expected to be \$93,723, or \$179 per charter vessel, if the recreational sector is managed to its ACL.

The proposed rule would also increase the recreational ACT for Gulf red grouper from 1.57 million lb (0.71 million kg) to 1.84 million lb (0.83 million kg). The ACT is only germane if the recreational sector exceeds its ACL in the future, as that would trigger the post-season AM, causing the recreational sector to be constrained to the recreational ACT rather than the recreational ACL. Average annual landings in the recreational sector from 2016 through 2019 are slightly below the proposed recreational ACL. However, the recreational sector for Gulf red grouper closed on September 15 in 2021 (86 FR 51276, September 15, 2021). Therefore, it is possible that the post-season AM may be triggered in the future, causing the recreational sector, including the for-hire component, to be constrained to the ACT. If the post-season AM is triggered and the recreational sector is managed under the ACT, this proposed rule would increase the recreational season length by 45 days by extending the season through the end of the year. Without the ACT increase, NMFS projects that the season would end on November 16. NMFS expects the 45-day increase in the season length to increase the number of trips targeting red

grouper on charter vessels by 2,352 angler trips. Thus, if the post-season AM is triggered, the estimated increase in charter vessel profits from this proposed rule would be \$331,637 or \$632 per charter vessel.

Based on the information above, although a substantial number of small entities would be affected by this proposed rule, this proposed rule would not have a significant economic impact on those entities. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Gulf of Mexico, Red grouper, Reef fish.

**(Authority:** 16 U.S.C. 1801 *et seq.*)

Dated: April 27, 2022.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND  
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) *Red grouper* - 2.79 million lb (1.27 million kg).

\* \* \* \* \*

3. In § 622.41, revise the last sentence of paragraph (e)(1) and revise paragraph (e)(2)(iv) to read as follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \* The commercial ACL for red grouper in gutted weight is 2.94 million lb (1.33 million kg).

(2) \* \* \*

(iv) The recreational ACL for red grouper in gutted weight is 2.02 million lb (0.92 million kg). The recreational ACT for red grouper in gutted weight is 1.84 million lb (0.83 million kg).

\* \* \* \* \*

[FR Doc. 2022-09389 Filed: 5/2/2022 8:45 am; Publication Date: 5/3/2022]